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Matthew J. Neubert
Executive Director

Jane Rodda
Hearing Division Director

ARIZONA CORPORATION COMMISSION

OPEN MEETING ITEM

DATE: DECEMBER 29, 2022

DOCKET NO.: E-01933A-19-0028

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

**TUCSON ELECTRIC POWER COMPANY
(AMENDING DECISION NO. 77856 PURSUANT TO A.R.S. § 40-252)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by efile at <https://efiling.azcc.gov/> or filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 9, 2023

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JANUARY 10 AND 11, 2023

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

A handwritten signature in black ink, appearing to read "m. neubert", is written above the printed name.

**MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR**

On this 29th day of December, 2022, the following document was filed with Docket Control as a Recommended Order from the Hearing Division, and copies of the document were mailed on behalf of the Hearing Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the filed document to the following who have consented to email service.

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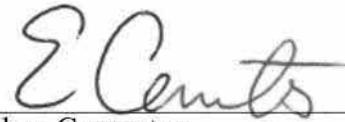
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 LEA MÁRQUEZ PETERSON– CHAIRWOMAN
4 SANDRA D. KENNEDY
5 JUSTIN OLSON
6 ANNA TOVAR
7 JIM O’CONNOR

8 IN THE MATTER OF THE APPLICATION OF
9 TUCSON ELECTRIC POWER COMPANY FOR
10 THE ESTABLISHMENT OF JUST AND
11 REASONABLE RATES AND CHARGES
12 DESIGNED TO REALIZE A REASONABLE RATE
13 OF RETURN ON THE FAIR VALUE OF THE
14 PROPERTIES OF TUCSON ELECTRIC POWER
15 COMPANY DEVOTED TO ITS OPERATIONS
16 THROUGHOUT THE STATE OF ARIZONA AND
17 FOR RELATED APPROVALS.

DOCKET NO. E-01933A-19-0028

DECISION NO. _____

ORDER AMENDING DECISION
NO. 77856 PURSUANT TO A.R.S. §
40-252

12 Open Meeting
13 January 10 and 11, 2023
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the Arizona
17 Corporation Commission (“Commission”) finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On December 31, 2020, the Arizona Corporation Commission (“Commission”) issued
20 Decision No. 77856 in this matter.¹ In that Decision, Commission ordered as follows:

21 IT IS FURTHER ORDERED that Staff shall open a generic docket as soon as possible,
22 but no later than January 17, 2021, to address the impact of the closures of fossil-based
generation plant on Impacted Communities, and Staff shall begin soliciting comments from

23 ¹ The parties to this matter are: Tucson Electric Power Company (“TEP”), the Residential Utility Consumer Office
24 (“RUCO”), Freeport Minerals Corporation (“Freeport”) and Arizonans for Electric Choice and Competition (“AECC”),
25 International Brotherhood of Electrical Workers Local 1116 (“IBEW”), Arizona Energy Policy Group, (“AEPG”), Vote
26 Solar, Sierra Club, Arizona Public Service Company (“APS”), Walmart, Inc. (“Walmart”), Kroger Co. (“Kroger”), Western
27 Resource Advocates (“WRA”), the Southwest Energy Efficiency Project (“SWEEP”), Wildfire, Calpine Energy Solutions,
28 LLC (“Calpine”), Constellation Energy, LLC (“Constellation Energy”), and Direct Energy Business, LLC (“Direct Energy”
and together with Calpine and Constellation Energy, “CCD”), the Banners of Safeway and Albertsons (“Safeway”), San
Juan Citizens Alliance, Diné CARE, and Tó Nizhoní Ání (collectively, “Citizen Groups”), Black Mesa Water Coalition
 (“Black Mesa”), SOLON Corporation (“SOLON”), the Department of Defense and Federal Executive Agencies (“DOD”),
the Southern Arizona Home Builders Association (“SAHBA”), Trico Electric Cooperative, (“Trico”), City of Tucson, Pima
County, the Arizona Solar Energy Industries Association (“AriSEIA”), Hopi Tribe, the Navajo Nation, and the Republican
Liberty Caucus.

1 Impacted Communities, the Governor's Office, state legislature, regulated and unregulated
2 entities, state and federal agencies, and public utility commissions in neighboring states
regarding the generic docket such that Staff can make recommendations to the Commission
by May 29, 2021.

3 IT IS FURTHER ORDERED that this docket shall be held open for a Phase Two
4 proceeding for receipt of additional evidence and testimony regarding the findings,
conclusions, and recommendations in the generic docket.

5 IT IS FURTHER ORDERED that the Hearing Division shall allow intervention in the
6 Phase Two proceeding of parties who have a direct interest in this narrow issue.

7 IT IS FURTHER ORDERED that the Hearing Division shall hold a procedural conference
8 within 45 days of the issuance of a Decision in the current Arizona Public Service rate case,
Docket No. E-01345A-19-0236 ("APS Rate Case"), to establish a timeline for the filing of
evidence and testimony, and conducting a hearing, in the Phase Two proceeding.

9
10 2. On January 12, 2021, Staff opened Generic Docket No. E-00000A-21-0010, In the
11 Matter of Impact of the Closures of Fossil-Based Generation Plant on Impacted Communities
12 ("Generic Transition Docket").

13 3. Subsequently, intervention in this docket was granted to the Navajo Nation, the Hopi
14 Tribe, and the Black Mesa Trust.

15 4. On November 9, 2021, the Commission issued Decision 78317 in the APS Rate Case.
16 In that Decision, the Commission directed as follows:

17 IT IS FURTHER ORDERED that, to ensure the Commission adequately engages with
18 stakeholders, proactively seeks and receives sufficient comments and input from the public,
19 and initiates and facilitates meaningful conversations with all parties involved, Staff shall
20 make the Generic Transition Docket a high priority and, within 90 days of the effective
date of this Decision, hold a procedural workshop to develop and discuss with stakeholders
a timeline and process for determining how the Commission should further address the
following:

- 21 • Proactively seeking out and engaging members and representatives from the
22 legislature, governor's office, state and federal agencies, tribal nations, New Mexico
23 Public Regulation Commission, relevant non-governmental organizations, joint
owners of relevant fossil-based generation, and regulated and unregulated electric
utilities operating in Arizona and other states;
- 24 • Finding and obtaining opportunities to receive state or federal funds or other forms
25 of support to assist Arizona communities impacted by the closure of fossil-based
generation, including monitoring and advocating for pending legislation,
submitting applications for existing grant funding, and other opportunities;
- 26 • Making and assisting third parties in their efforts to seek funds or other forms of
27 support for Arizona communities impacted by the closure of fossil-based
28 generation;

- Establishing a task force consisting of governmental entities and tribal advocates who are or should be involved in the development of policy on issues concerning Arizona communities impacted by the closure of fossil-based generation; and
- Holding workshops, town halls, public comment sessions, stakeholder meetings, and other forms of progress to seek a reasonable and timely resolution on the items detailed above.

IT IS FURTHER ORDERED that, within 30 days following the stakeholder workshop described above, Staff shall prepare and file in the docket, for Commission review and approval, a detailed timeline and proposal identifying how Staff and stakeholders plan to work together to address and ultimately obtain any additional resolution of the issues detailed above.

IT IS FURTHER ORDERED that Staff shall hold its first substantive workshop in the Generic Transition Docket within 90 days of the effective date of this Decision. This workshop should be reflected in Staff's proposed timeline, as well as any other workshops, town halls, public comment sessions, stakeholder meetings, and other forms of engagement that Staff or the Commission determine should be utilized or pursued to seek a reasonable and timely resolution on the items detailed above.

5. On November 16, 2021, a Procedural Order was issued in this Docket scheduling a procedural conference for December 7, 2021, to discuss the manner of proceeding in Phase 2, including whether the Phase 2 proceeding should be stayed pending the outcome of the Generic Transition Docket.

6. On December 6, 2021, TEP docketed the Company's Comments on Phase 2 Proceeding. The Company stated that it believed that it was reasonable to begin the Phase 2 Proceeding only after the Generic Transition Docket had provided guidance as to what the focus of the Phase 2 Proceeding should be.

7. The procedural conference commenced as scheduled on December 7, 2021. Present through counsel at the procedural conference were TEP, Sierra Club, Local Union 1116, AECC, Freeport, Citizens Groups, Black Mesa Water Coalition, Black Mesa Trust, APS, Hopi Tribe, RUCO, and Staff. During the procedural conference, the parties discussed whether the Phase 2 proceeding should be stayed pending the outcome of the Generic Transition Docket.

8. On January 6, 2022, a Procedural Workshop in the matter of Impact of the Closures of Fossil-Based Generation Plant on Impacted Communities, Docket No. E-00000A-21-0010 ("Workshop") was held. During the Workshop, the scope and process of the Generic Transition Docket was discussed, and comments from interested parties were taken. Staff noted that a second Workshop would be held in February 2022 to discuss the substance of the Generic Transition Docket.

1 9. TEP, Local Union 1116, AECC, Freeport, APS, RUCO, and Staff asserted that the
2 Phase 2 Proceeding should be stayed because the Generic Transition Docket would address several
3 issues that were pertinent to the Phase 2 Proceeding. They further asserted that running a parallel
4 proceeding with the Generic Transition Docket created an added expense. Staff also believed that a
5 dual track could be confusing and inefficient.

6 10. Sierra Club, Citizens Groups, Black Mesa Water Coalition, Black Mesa Trust, WRA,
7 and the Hopi Tribe argued that the Phase 2 Proceeding should be held concurrently with the Generic
8 Transition Docket. These parties claimed that staying the Phase 2 Proceeding would only add to the
9 delay in addressing TEP's share of debt funding, if any. They also noted that in the APS matter,
10 transition assistance was awarded in that case without waiting for the outcome of the Generic Transition
11 Docket.

12 11. On January 19, 2022, based on the discussion of the scope of the Generic Transition
13 Docket Workshop, and the arguments of TEP, Local Union 1116, AECC, Freeport, APS, RUCO, and
14 Staff, the Phase 2 Proceeding was stayed pending the outcome of the Generic Transition Docket. The
15 Procedural Order also ordered that within 30 days of the conclusion of the Generic Transition Docket,
16 a procedural conference should be held to establish the procedures for the Phase 2 Proceeding.

17 12. On October 21, 2022, Staff issued its Memorandum and Proposed Order making certain
18 recommendations, including, among other things, that no rate payer funds should be used for any Just
19 and Equitable Transition programs ("JET Proposed Order").

20 13. The JET Proposed Order was considered by the Commission at the November 9, 2022,
21 and the December 6, 2022, Open Meetings. After discussion, the Commission voted 3 – 2 against the
22 adoption of the JET Proposed Order.

23 14. On December 9, 2022, a Procedural Order was issued setting a procedural conference
24 for January 12, 2022, regarding the Phase 2 Proceeding. The Procedural Order also directed interested
25 parties to prepare and file a proposal for the Phase 2 Proceeding.

26 15. We note that after the issuance of Decision No. 77856 in December 2020, the Company
27 filed a new rate application on June 17, 2022, in Docket No. E-01933A-22-0107. Because of the
28 updated financial information in the rate application, the Revenue Requirement and Rate Design data

1 adopted in Decision No. 77856 is now stale and has little value in a discussion regarding the amount
2 of funds, if any, for transition programs.

3 16. Given that TEP has a rate application currently pending before the Commission, we
4 believe that the more appropriate course of action regarding the Phase 2 Proceeding is to have the
5 parties address the transition issues in the current rate application docket.

6 17. Accordingly, we find that it is reasonable to administratively close that portion of
7 Decision No. 77856 relating to the Phase 2 Proceeding and allow the parties to address any transition
8 issues in the Company's current rate case. In all other respects, Decision No. 77856 shall remain in full
9 force and effect.

10 **CONCLUSIONS OF LAW**

11 1. TEP is a public service corporation within the meaning of Article XV of the Arizona
12 Constitution.

13 2. The Commission has jurisdiction over TEP.

14 3. A.R.S. § 40-252 authorizes the Commission to alter or amend a Decision.

15 4. It is reasonable, appropriate and in the public interest to modify Decision No. 77856 as
16 discussed above.

17 **ORDER**

18 IT IS THEREFORE ORDERED that pursuant to A.R.S. §40-252, Decision No. 77856 is
19 modified to administratively close that portion of the Decision relating to the Phase 2 Proceeding.

20 ...

21 ...

22 ...

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25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that in all other respects, Decision No. 77856 shall remain in full
2 force and effect.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6
7 CHAIRWOMAN MÁRQUEZ PETERSON COMMISSIONER KENNEDY

8
9 COMMISSIONER OLSON COMMISSIONER TOVAR COMMISSIONER O’CONNOR

10
11 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,
12 Executive Director of the Arizona Corporation Commission,
13 have hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2023.

16 _____
17 MATTHEW J. NEUBERT
18 EXECUTIVE DIRECTOR

19
20 DISSENT _____

21
22 DISSENT _____
23 BAM/ec

SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY

DOCKET NO.:

W-01933A-19-0028

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